



the Hollings Center
for international dialogue



The American Institute
of Afghanistan Studies

“FUNDAMENTALS OF GOVERNANCE IN AFGHANISTAN” CONFERENCE SUMMARY

June 2009

The 2004 Afghan Constitution revived a highly centralized government with a strong presidency; five years on, it is apparent that this arrangement is failing on many counts.

In late June 2009, the Hollings Center for International Dialogue and the American Institute of Afghanistan Studies (AIAS) convened leading experts from Afghanistan, Europe, Turkey, and the United States in Istanbul for a three-day conference, entitled “Fundamentals of Governance in Afghanistan,” to explore governance, widely seen as central to Afghanistan’s progress. The conference focused on three crucial areas: central government capacity; the rule of law; and subnational governance. This short report offers the key recommendations emerging from the discussions.¹ A full report will be issued this fall.

KEY RECOMMENDATIONS

Stability in Afghanistan requires that its people accept state authority as legitimate and trust its institutions. This will happen only if the central government addresses the people’s “hierarchy of needs”—security, justice, and economic development—through good governance.

If improvements in governance do not happen quickly, then the international community may scale back its commitment to Afghanistan and cut support—risking a return to the anarchy and tumult that drew international forces into the country in 2001.

In light of the August 20 presidential elections and the sharp uptick in violence, the issues most important for bringing better governance demand immediate attention. The window is closing on the chance to bring change. After the election, the international community, led by the United States, should press for and support the following reforms:

- **Improve the appointments process for senior officials**, especially provincial governors, so that the corrupt and unqualified do not get important offices and undeserving incumbents can be removed for cause.

- Alongside the U.S military and civilian surge, **commit to a comprehensive “Afghan civilian surge”** that parallels the effort to build a capable, competent Afghan national security force.

¹ This report was prepared by AIAS President Thomas J. Barfield. The conference was the third annual Hollings Center-AIAS dialogue in Istanbul on the future of Afghanistan. Go to www.hollingscenter.org to read the reports from the 2007 conference on the Afghanistan-Pakistan border and the 2008 conference on Afghanistan’s relations with Iran, Central Asia, and China.

- **Enact legal changes that allow candidates to affiliate with political parties** on the ballot for the upcoming parliamentary elections.
- **Recognize the results of Afghanistan’s traditional systems of mediation and arbitration as valid and enforceable** within the formal court system.
- **Arrest, prosecute, and convict some high level criminal offenders** through due process to show the government’s will to implement the rule of law.
- **Organize sub-national civil administration on a regional basis** (paralleling the organization of the military and police) in order to foster efficient, affordable, and responsive government organizations while still respecting the existing sub-national units.
- **Enact legislation that gives the same limited revenue-generating powers to provinces and other sub-national entities** as those accorded to municipalities, and allow provinces and municipalities to retain and spend a portion of those revenues for local services.

KEY ANALYTICAL JUDGMENTS

Rebuilding Afghanistan’s institutions after the country’s long periods of conflict is a daunting task. Opinion surveys find overwhelming popular support among Afghans for better governance, but also distrust of the current government. This distrust has a long history rooted in tensions between the national government in Kabul and rural dwellers.

Conference participants therefore argued that stability in Afghanistan hinges on gaining Afghans’ acceptance of the state’s authority and their trust in its institutions. For this to happen, the central government, and not the international community or foreign military forces, must be seen as fulfilling the population’s most basic “hierarchy of needs”—security, justice, and economic development—and deliver services linked to good governance.

Conference participants discussed the danger of assuming that the familiar models of Afghan governance will remain relevant. Two major—but largely unrecognized—demographic shifts are transforming Afghan politics. First, 60 percent of Afghanistan’s population is less than 25 years old. Despite that, the nation’s leaders have given its youth almost no political or economic opportunities. Second, explosive growth in urbanization and a growing familiarity with the outside world have created a people less bound by ethnic and regional divisions and with new expectations of government. Responding to the demands of these emerging majorities calls for new thinking about the structure of governance, better mapping of power structures and stakeholders, and careful application of lessons from previous regimes.

To foster stability within Afghanistan, **the conference focused on three areas on which Afghans and the international community must concentrate: 1) central government capacity; 2) the rule of law; and 3) sub-national governance.**

1) CENTRAL GOVERNMENT CAPACITY

In response to pressing needs for immediate and massive action toward the rebuilding of the Afghan state, participants at the 2001 Bonn process agreed on the need for a strong central government in Kabul. But that did not materialize. Almost immediately, it was clear that the central government had limited control in the provinces, where many local leaders refused to cede power and kept themselves in positions of unfettered and often abusive power.

To address this imbalance, which was in part tacitly encouraged by the international forces, the international community supported creation of a strong president and a weak parliament—an arrangement based on the state building efforts in the late nineteenth century of Amir Abdur Rahman and on the 1964 Constitution promulgated by King Zahir Shah.

Arguments against reviving such a structure in a country with strong regional differences were dismissed as encouraging warlordism and ethnic division. The debate about a centralized versus a devolved form of government, however, remains one of the most contentious issues in Afghan politics. Most of Afghanistan's civil wars were fought over whether Kabul would exercise authority over the country or accept de facto autonomy of the most powerful regions. This question remains important within Afghanistan because of the difficulties in giving authority to decentralized power structures without reinforcing the militia commanders whose continual feuding destabilized and fragmented the country.

Concerning the structure of the national government, participants recognized that restrictions on formal political party affiliation have reduced the capacity of the Parliament to organize itself as an autonomous branch of government. The single non-transferable vote system, used in the last parliamentary election, reinforces existing regional and ethnic divisions because candidates with strong support from such groups had a far greater chance of being elected.

The debate over forms of government aside, conference participants agreed that despite the unitary structure of the Afghan government, it is unable to develop the extent of control achieved by earlier regimes. Several factors contribute to this reality. One participant observed that Afghanistan faces three simultaneous conflicts: against terrorists, against insurgents, and the struggle to build an Afghan state. The efforts to engage in each one weaken the ability to fight and prevail in the others, particularly with respect to the Afghan state's ability to project its power.

Likewise, Afghanistan is subject to four parallel and autonomous government systems (five, if the Taliban is included): the United States, the United Nations, nongovernmental organizations (NGOs), and the Afghan central government. Of the four, the central government is the weakest structurally.

Efforts to expand government capabilities have focused on security and improving the country's army and police force. While understandable, this has resulted in the gross underdevelopment of civilian capacity. Despite various initiatives and programs, this sector is lagging behind. To address this imbalance there must be a stronger commitment to recruit, train, and deploy qualified Afghans. At the same time, levels of compensation and working conditions must be attractive enough for capable individuals to want to work for the government. Over the past seven years, Afghanistan and the Afghan people have suffered from an assumption that nation building can be done through limited investments of resources and time. This

“quick fix” attitude should be replaced by a candid acceptance of the need for long-term commitments to build capacity within a framework that encourages and rewards actual accomplishment.

Recommendations:

- **Commit to an “Afghan civilian surge” that would put as the highest priority getting Afghan officials and professionals on the path to meet the urgent demand for qualified personnel in the government and private sector.**

The government must give opportunities that will allow Afghanistan to meet its employment needs and build human resources. Currently, the army, police, international organizations, and NGOs are draining the talent pools and resources needed to accomplish this. Participants argued that training Afghans to a higher professional level is better than hiring more foreigners to meet demand for qualified personnel. To this end, they proposed a genuine and coherent commitment by the government and its international partners—comparable to the elaborate and well-funded effort to train and develop the police and the military—that puts as top priority in all projects arrangements that prepare Afghans to move into professional, responsible positions. While not neglecting training police and increasing the size of the army, the Afghan government can be effective only if its civilian agencies and private sector have adequate support and capacity to grow.

- **Improve the appointments process for senior officials, especially governors, so that corrupt and unqualified people are not put in office and failing incumbents can be removed for cause.**

The current system for appointing governors and senior ministry officials who are incompetent, corrupt, or abuse the people they serve undermines efforts to expand government capabilities. Appointments can be political, but office holders must have a basic set of qualifications and competence for the positions they are to fill. Supporting the Special Advisory Board for Senior Appointments, established in 2008 as part of the 2006 Afghanistan Compact, could help deal with the problem. The Board has nominal responsibility for vetting and recommending appointments to President Hamid Karzai, but it lacks independence and influence. It also needs the authority to remove incumbents for malfeasance. If the existing Board cannot be thus empowered, another option is for Parliament to create an independent Appointments Commission under its authority.

- **Allow political parties on the ballot for the upcoming parliamentary elections.**

Political parties are barred from participating in the electoral process by President Karzai’s unwillingness to allow candidates to appear on the ballot with party labels. This means that elected officials owe nothing to a party and have little incentive to work collectively. Fears of division should not be allowed to hinder free political debate. A democratic government cannot operate effectively if likeminded individuals cannot band together and run for office on a common platform. The government should allow the immediate registration of political parties and their leadership, let them to chose their own identifying symbols, and establish realistic threshold criteria for a party’s presence on the ballot.

2) THE RULE OF LAW

The Afghan government is failing to deliver rule of law to its people. The lack of an effective justice system is a common complaint against the Kabul government. Indeed, the claims by the Taliban insurgents that

they deliver justice are a key selling point in their strategy for gaining legitimacy as a “counter-state” competitor to the Kabul government. But this is hardly a new problem.

Afghans historically have distrusted state judicial institutions for valid reasons and have turned to their customary systems of mediation and arbitration to resolve the vast majority of their disputes. They view their informal systems as less corrupt, more efficient, and less time consuming than the state system that is vying to displace them. Yet, they are compatible with state systems of justice and in rural areas government officials use them as tools for maintaining social stability. To date attempts to reform the Afghan legal system have been stymied by a broad range of interests that agree on little other than blocking reform. One particular problem is that many international and western trained legal experts espouse a formal, codified system of justice and are disdainful of other forms of conflict resolution.

A culture of impunity that undermines the legitimacy of the Kabul government magnifies the systemic problems in the justice sector. Corrupt officials and criminals enthusiastically display their ill-gotten gains. Even the best efforts to reform the judiciary and staff it with competent officials will have little effect if the government fails to muster the will and resolve to bring powerful lawbreakers to justice. Failure to tackle the problem also raises the question of whether the Afghan state has the power to do so, an implication that undermines respect for state authority.

Recommendations:

- **Recognize the results of Afghanistan’s traditional systems of mediation and arbitration as valid and enforceable within the formal court system.**

Afghans have developed sophisticated methods for resolving their disputes through mediation and arbitration. But the outcomes lack legal standing: currently all disputes must be run through the formal justice system. Law codes in the West recognize the validity of mediation and arbitration agreements but have no difficulty in ensuring that disputants have the right to seek justice in the formal system or that the agreements are consistent with basic legal principles of fairness and human rights. A possible way forward would be for Afghanistan to adopt legislation that will grant the decisions reached through these informal arrangements legal recognition and enforceability within the court system, as long as they are in accord with the fundamental, explicit tenets that undergird Afghan justice. International support should extend beyond the state justice system to recognize the right of individuals and organizations to resolve conflicts outside of the court system while ensuring their access to the formal system if they chose.

- **Arrest, prosecute, and convict through due process high level offenders to demonstrate the government’s determination to implement the rule of law.**

The international community’s focus on judicial reform has been largely bureaucratic and institutional. But even the best tools are ineffective without the political will to use them. The chance for seeking justice for earlier war crimes and abuses of power slipped away when perpetrators were allowed to keep their government positions, run in national elections, and pass amnesties that absolved them of liability for their actions. Conference participants noted that, at the very least, the government needs to demonstrate its willingness to punish current criminal violations. In addition to formal legal processes, forms of transitional

justice that provide accountability for past actions would also serve to breach the wall of impunity that currently protects the powerful from even acknowledging past wrongs.

3) SUB-NATIONAL GOVERNANCE

Government decentralization is a charged issue, but participants agreed that Afghanistan's unitary system is weakest at the local level, where laws are not implemented and many regions are insecure. Ministries demand that critical paperwork, planning and decision-making be done in Kabul, forcing provincial Afghans to travel there—at great expense—for even trivial matters. The power of the central government to appoint governors and other functionaries to the provinces with little input from the inhabitants is a source of tension. Additionally, as the number of provinces continues to grow (there are now 34), they become increasingly ineffective and inefficient as units of planning, rational administration, and service delivery.

Recommendations:

- **Plan and implement by region rather than nationally or by province.**

The reorganization of sub-national governance into a regional framework based on Afghanistan's major cities (Herat, Jalalabad, Kabul, Mazar-i-sharif, Qandahar, Qunduz) would allow services and infrastructure to be provided in a more cost-effective and coherent manner. Economic development and the provision of services could be better tailored to local conditions and would be more sustainable than attempting to duplicate efforts in 34 provinces. It also would avoid the one-size-fits-all approach that currently hinders national planning. While existing governmental units should be respected, they should not stand as obstacles for more effective planning and administration.

- **Establish effective ministry representation in Afghanistan's major cities beyond Kabul to better meet local needs.**

Access to government services can be improved by the presence of about five or six satellite, or branch, ministries that would bring capacity closer to the many provincial offices as well as make more accessible services such as teacher certification now available only in Kabul. International donors should agree to support establishment of regional ministry representation and their terms of reference and procedures to ensure their effectiveness. Ministries having the greatest role in delivering local services such as Education, Rural Rehabilitation, and Transportation, should receive the highest priority. It would be better for donors to support strongly those ministries willing to establish regional offices than to consume a great deal of time trying to establish a national policy and force reluctant ministries to comply.

- **Give limited revenue-generating powers to provinces as well as to municipalities, and give both the power to spend at least part of the revenues they raise.**

Except for the municipalities, all revenue from tax and fees in Afghanistan goes to the national government. There is no provision for other sub-national units, provinces, districts, or communities to raise revenue. Legislation should be approved that provides for them to raise limited amounts of revenue to meet local needs more efficiently. This would show that taxation is related to services and not just a form of revenue extraction that benefits others.

A CONCLUDING THOUGHT

Since 2001 countless proposals and plans for good governance in Afghanistan have been generated at international conclaves, in world capitals, and in Afghanistan. Most have been well intentioned. But lacking has been an unstinting commitment to tackle the massive challenges of implementation. No new plan or revised strategy, however insightful, will succeed if it is impractical or the political will is lacking to implement it. The participants in this conference agreed that greater attention must be directed at practical implementation issues such as effective collaboration among the stakeholders, aid delivery structures, and means to assess effectiveness. The fundamental criterion for successful implementation is whether positive change is produced for the Afghan people.